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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.4493 OF 2019

Sanjay Jagannath Phagnekar

... Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. P. P. Runwal, for the Petitioner.

Ms. P. P. Shinde, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 28th NOVEMBER, 2019

P.C. :

1. Heard learned counsel for the petitioner.
2. By this petition, the petitioner has sought certain directions. The petitioner is the original complainant, who has filed a complaint as against his wife – Meena Phagnekar, alleging an offence punishable under Section 500 of the Indian Penal Code, in the Court of the learned Civil Judge Junior Division and Judicial Magistrate First Class, at Ulhasnagar. The said case is numbered as S.C.C. No.1531 of 2008. It appears that the said case was filed by the petitioner on 17th March, 2008 and the same is still pending in the Court of the learned Civil Judge Junior Division and Judicial

Magistrate First Class, at Ulhasnagar, for verification, since 2008.

3. Learned Counsel for the petitioner states that inspite of the fact that there is direction from this Court to complete the trial in all the old pending cases, the said case is pending till date. He states that as the petitioner's case papers were not traceable, the petitioner filed an application under the Right to Information Act and learnt that his case papers were not traceable. Learned counsel relied on the inspection papers, which are from page nos.42 to 44 of the petition. He submits that in the inspection report, it is mentioned that there is negligence on the part of the then Bench Clerk, however, no action has been taken against the concerned persons responsible for disappearance of the petitioner's case papers. Learned Counsel requests that the learned Judge be directed to reconstruct the case papers, since the case papers are untraceable since 2008.

4. Learned APP states that appropriate directions can be given to the learned Judge to get the case papers reconstructed and the trial can also be expedited.

5. As noted above, the case is pending for verification, since 2008. The Inspection Report also shows that the case papers are not

traceable. Inspection Report also mentions that the then Bench Clerk was negligent. The Inspection Report also mentions that the Presiding Officer should get the case papers traced from the concerned Clerk and if the same is not traced, then fix the responsibility upon the concerned Clerk and a report to that effect be submitted to the District Court. It is not in dispute that the case papers are not traceable.

6. Having regard to what is stated herein-above, the Petition is allowed on the following terms and conditions :-

O R D E R

- (i) The trial of S.C.C. No.1531 of 2008, pending on the file of the learned Civil Judge Junior Division and Judicial Magistrate First Class, at Ulhasnagar, is expedited;
- (ii) Since the papers are not traceable, the learned Judge to ensure that the papers are reconstructed with the assistance of the learned counsel for the petitioner, so that the case can proceed on its own merits in accordance with law;
- (iii) Having regard to the Inspection Report, the learned Judge to take steps to initiate an enquiry, as against the concerned officers responsible

for disappearance of the papers, so that the responsibility can be fixed and appropriate action can be taken against the concerned officers.

7. The Petition is allowed and disposed of in above terms.
8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.